

IN THE SUPREME COURT OF FLORIDA

Mario Mirabal,

Petitioner,

v.

KP Investments Miami, LLC; Deutsche Bank National Trust Company,

Respondents.

Case No.: _____

PETITION FOR ALL WRITS RELIEF UNDER ART. V, § 3(b)(8), FLA.
CONST.

I. INTRODUCTION

Petitioner, Mario Mirabal, pro se, respectfully petitions this Court for extraordinary relief under Article V, § 3(b)(8) of the Florida Constitution. Petitioner has been deprived of any meaningful remedy in the lower courts, as the trial court continues to act despite disqualification, federal divestiture of jurisdiction, and pending appeals, while the Third District Court of Appeal has repeatedly denied or dismissed Petitioner's filings without written opinion. This Court's "all writs" power is necessary to protect its jurisdiction, to prevent irreparable harm, and to ensure the appearance of impartial justice.

II. JURISDICTION

Article V, § 3(b)(8) of the Florida Constitution empowers this Court to issue “all writs necessary to the complete exercise of its jurisdiction.” Where a District Court of Appeal issues only summary denials and leaves a litigant without meaningful remedy, this Court may intervene to prevent injustice.

III. STATEMENT OF THE CASE AND FACTS

Petitioner is the Defendant in a foreclosure-derivative action, KP Investments Miami, LLC v. Mirabal, Case No. 2024-022769-CA-01, pending in the Eleventh Judicial Circuit.

In July 2025, Petitioner filed a motion to disqualify Chief Judge Orshan, which was deemed granted by operation of law under Rule 2.330. Despite this, Judge Orshan signed an order denying Petitioner’s Motion to Stay/Abate.

On August 26, 2025, Petitioner filed an Emergency Motion to Disqualify Judges Orshan and Simon, documenting bias, docket manipulation, and federal divestiture. On August 29, 2025, Judge Simon denied the disqualification motion.

Petitioner has also filed notices of federal jurisdiction (April 2025) and pending fraud appeals under Rule 60(d)(3) in the Eleventh Circuit (May 2025), showing that state jurisdiction was divested and higher courts are seized of the matter.

Despite these filings, the trial court continues to act, setting hearings and entertaining contempt motions.

IV. APPELLATE HISTORY

Petitioner has repeatedly sought relief from the Third District Court of Appeal, including writs of prohibition, mandamus, and motions for reconsideration.

Each filing was denied without opinion. (See Exhibit B).

On August 28, 2025, Petitioner's motion for rehearing en banc and for a written opinion was likewise denied without opinion. (See Exhibit C).

These summary denials deprive Petitioner of any meaningful remedy and leave no explanation or precedent for review.

V. GROUNDS FOR RELIEF

Void Orders by Disqualified Judges. Chief Judge Orshan, already disqualified by deemed grant, signed orders after recusal, rendering them void. Judge Simon improperly ratified those orders and denied disqualification, compounding structural bias.

Denial of Due Process. Florida and federal constitutions require a neutral tribunal. Actions by disqualified judges, coupled with the denial of meaningful review, violate due process.

Failure of the DCA to Provide Remedy. The Third DCA's repeated denials without opinion leave Petitioner without an adequate state remedy, triggering this Court's "all writs" jurisdiction.

Federal Supremacy. Jurisdiction was divested upon notice of federal removal (28 U.S.C. § 1446(d)) and multiple fraud appeals are pending in the Eleventh Circuit. Continuing state action undermines federal supremacy.

VI. RELIEF REQUESTED

Petitioner respectfully requests that this Court:

Accept jurisdiction under Article V, § 3(b)(8).

Issue an order to the Eleventh Judicial Circuit, directing that all proceedings in Case No. 2024-022769-CA-01 be stayed pending resolution of federal proceedings and disqualification issues.

Vacate or prohibit enforcement of orders entered by disqualified judges.

Grant such other and further relief as this Court deems just.

VII. EXHIBIT INDEX

Exhibit A: Emergency Motion to Vacate and Strike Void Orders (filed in Eleventh Judicial Circuit, Aug/Sept 2025, with Exhibits A–F).

Exhibit B: Compilation of Third DCA summary denials and dismissals without opinion.

Exhibit C: Third DCA August 28, 2025 Order denying rehearing en banc and written opinion (without opinion).

EXHIBIT D: EMERGENCY PETITION FOR WRIT OF PROHIBITION
OR, ALTERNATIVELY, PETITION FOR WRIT OF CERTIORARI
TO ENFORCE DEEMED GRANT OF JUDICIAL DISQUALIFICATION
AND TO HALT FURTHER ACTION BY DISQUALIFIED JUDGE

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W 49th Street

Miami Beach, FL 33140

Phone: 786-479-6596

Email: solphax@gmail.com

EXHIBIT A

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

Case No. 2024-022769-CA-01

KP INVESTMENTS MIAMI, LLC, Plaintiff,

v.

MARIO MIRABAL, Defendant.

DEFENDANT'S EMERGENCY MOTION TO VACATE AND STRIKE VOID
ORDERS ENTERED BY DISQUALIFIED JUDGE AND IMPROPER DENIAL
OF RECUSAL

I. INTRODUCTION

Defendant, Mario Mirabal, pro se, respectfully moves on an emergency basis to vacate and strike (1) the Order Denying Defendant's Motion to Stay/Abate, improperly signed by disqualified Judge Ariana Fajardo Orshan, (2) the Order Denying Defendant's Emergency Motion to Disqualify both Judge Orshan and Judge Simon, improperly entered by Judge Simon on August 29, 2025, and (3) to confirm that both judges are now deemed recused by operation of law. These orders are void and unconstitutional because they were entered by judges who lacked authority to act, disregarded a deemed grant of disqualification, and proceeded despite federal divestiture and pending appeals.

II. BACKGROUND

On August 20, 2025, Defendant filed a Motion to Stay/Abate for lack of jurisdiction.

That motion was denied not by presiding Judge Simon, but by Judge Orshan, who had already been disqualified. The order (Exhibit A) lacks an ePortal timestamp and appears backdated.

On July 22, 2025, Defendant filed a Notice of Deemed Grant of Disqualification under Rule 2.330, which by operation of law removed Judge Orshan from presiding. Despite this deemed grant, Judge Orshan subsequently signed the Stay/Abate denial order (Exhibit D).

On August 26, 2025, Defendant filed an Emergency Motion to Disqualify Judges Simon and Orshan with Exhibits A–J documenting docket irregularities and bias (Exhibit B).

On August 29, 2025, Judge Simon denied that disqualification motion (Exhibit C), improperly ruling on a motion that encompassed both herself and the Chief Judge, and effectively ratifying Orshan's void order.

On April 28, 2025, Defendant filed a Notice of Federal Jurisdiction (Exhibit E), advising that jurisdiction was divested to federal court as of March 28, 2025 (docket entry no. 44). Despite this notice, orders continued to be entered in violation of 28 U.S.C. § 1446(d).

On May 23, 2025, Defendant filed a Notice of Pending Rule 60(d)(3) Fraud Motions in Six Federal Appeals (docket entry no. 52), confirming that federal

appellate courts are actively considering fraud claims that directly control this case (Exhibit F).

III. LEGAL STANDARD

Fla. R. Jud. Admin. 2.330(f): A judge shall take no further action once a motion to disqualify is filed until resolved; orders entered in violation are voidable.

Peterson v. Asklepious, 833 So.2d 262 (Fla. 4th DCA 2002): Orders entered by a disqualified judge are voidable and must be vacated.

Livingston v. State, 441 So.2d 1083 (Fla. 1983): Judges must be disqualified where impartiality might reasonably be questioned.

Fla. Const. Art. I § 9; U.S. Const. Amend. XIV: Due process requires a neutral tribunal.

28 U.S.C. § 1446(d): State courts lose jurisdiction upon notice of removal; further action is void.

IV. ARGUMENT

Stay/Abate Denial Void (Ex. A). The order was signed by Judge Orshan, who had already been disqualified under Rule 2.330 and by deemed grant (Ex. D). It lacks ePortal timestamp integrity and is void.

Disqualification Denial Void (Ex. C). Judge Simon improperly denied a motion targeting both herself and Orshan, ratifying an order she did not sign, and shielding her superior. This creates structural conflict and is void.

Federal Divestiture and Appeals (Exs. E & F). Jurisdiction was divested to federal court March 28, 2025; multiple fraud appeals are pending. Orders entered after these notices are ultra vires.

Joint Disqualification. Chief Judge Orshan was deemed recused as of July 2025 (Ex. D). Judge Simon was disqualified by operation of law upon Defendant's Aug. 28, 2025 motion (Ex. B), which she improperly denied on Aug. 29 (Ex. C). Both judges should therefore be recognized as deemed recused and barred from further participation.

Structural Bias. Together, these actions demonstrate docket manipulation, disregard of federal supremacy, and denial of due process.

V. RELIEF REQUESTED

Defendant respectfully requests that the Court:

Vacate and strike the Order Denying Defendant's Motion to Stay/Abate (Exhibit A).

Vacate and strike the Order Denying Defendant's Motion to Disqualify Judges Simon and Orshan (Exhibit C).

Confirm that Chief Judge Orshan was deemed recused as of July 2025 and Judge Simon was disqualified by operation of law as of August 28, 2025, such that both are barred from further action in this case.

Recognize that jurisdiction has been divested to federal court (Exhibit E) and fraud motions are pending in six federal appeals (Exhibit F).

Enter a stay of all proceedings pending resolution of Defendant's federal appeals and Rule 1.540(d) motions before Judge Enriquez.

Grant such further relief as the Court deems just.

EXHIBIT INDEX

Exhibit A: Order Denying Motion to Stay/Abate (signed by disqualified Judge Orshan, no ePortal timestamp).

Exhibit B: Defendant's Emergency Motion to Disqualify Judges Simon and Orshan (filed Aug. 26, 2025, with Exhibits A–J).

Exhibit C: Judge Simon's Order Denying Disqualification (Aug. 29, 2025).

Exhibit D: Defendant's Notice of Deemed Grant of Disqualification (July 2025).

Exhibit E: Defendant's Notice of Federal Jurisdiction (April 2025).

Exhibit F: Defendant's Notice of Pending Rule 60(d)(3) Fraud Motions in Six Federal Appeals (May 23, 2025).

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W 49th Street

Miami Beach, FL 33140

Phone: 786-479-6596

Email: solphax@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Motion to Vacate and Strike Void Orders was filed via the Florida Courts E-Filing Portal on this 1st day of September, 2025, which shall serve all counsel of record. Courtesy copies were transmitted to chambers with all parties copied.

Counsel for Plaintiff KP Investments Miami, LLC

John Cunill, Esq. – john@cunill.com

Courtesy Copy to Chambers (with all parties copied):

Hon. Ariana Fajardo Simon – chambers email per court protocol

Hon. Ariana Fajardo Orshan – chambers email per court protocol

/s/ Mario Mirabal

Mario Mirabal, Pro Se

EXHIBIT A

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2024-022769-CA-01

SECTION: CA32

JUDGE: Ariana Fajardo Orshan

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

VS.

Mario Mirabal

Defendant(s)

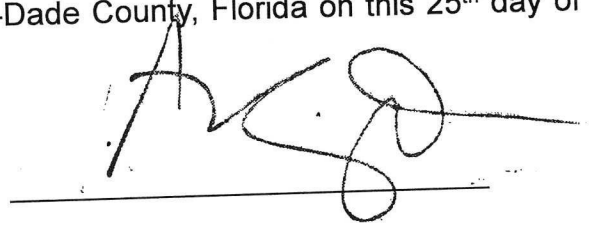
FILED FOR RECORD
2025 AUG 26 PM 4:01
CLERK OF THE COURT & COMPTROLLER
DADE COUNTY, FLA.
CIVIL #75

PROPOSED ORDER

THIS CAUSE came before the Court on Defendant's Notice of Lack of Jurisdiction and Motion to Stay/Abate Proceedings (Filed via ePortal on 8.20.20225). Upon review and being otherwise duly advised, it is hereby:

ORDERED AND ADJUDGED that Defendant's Motion is **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 25th day of August, 2025.


2024-022769-CA-01
Hon. Ariana Fajardo Orshan
CIRCUIT COURT JUDGE

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that the foregoing is a true and
correct copy of the original on file in this
office August 28 AD 20 25
Juan Fernandez-Barquin, Esq.
Clerk of the Court and Comptroller
Deputy Clerk 



33985052

EXHIBIT B

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
Case No.: 2024-022769-CA-01

KP Investments Miami, LLC, Plaintiff,

v.

Mario Mirabal, Defendant.

_____/

DEFENDANT'S MOTION TO DISQUALIFY JUDGE SIMON AND
CHIEF JUDGE ORSHAN FOR BIAS AND LACK OF IMPARTIALITY,
AND TO STAY PROCEEDINGS PENDING RESOLUTION OF APPEALS
AND RULE 1.540(d) MOTIONS

I. INTRODUCTION

Defendant, Mario Mirabal, pro se, respectfully moves for disqualification of

the Honorable Judge Lurdes Simon and the Honorable Judge Ariana Fajardo Orshan, and for a stay of proceedings. This motion is based on Florida Rule of General Practice and Judicial Administration 2.330 (disqualification) and 2.215(b)(4) (assignment/reassignment), as well as constitutional guarantees of due process and impartial tribunal.

II. FACTUAL BACKGROUND

Jurisdiction was divested to federal court as of March 28, 2025 (docket entry no. 44).

Motion Properly Filed, Denial Signed by Wrong Judge. Defendant filed a Motion to Stay/Abate (Ex. A)

The order denying that motion was signed not by Judge Simon but by Chief Judge Orshan, despite her prior recusal, and it lacked the official ePortal timestamp (Ex. B)

Proposed Order Irregularities. The Judicial Assistant deleted Defendant's proposed order while entering Plaintiff's, as confirmed in email correspondence (Ex. C)

Docket Manipulation. Administrative Order 25-06, reassigning the case, was entered out of sequence raising appearance of backdating.(Ex. D)

Draft Orders Circulated by Opposing Counsel. Emails show opposing counsel

(Cunill) circulating a draft Rule to Show Cause (Ex. E),

and a draft sanctions order (Ex. F),

which were then reflected in court transmissions (Ex. G, H),

Proceedings Despite Pending Appeals. Plaintiff has noticed depositions while six appeals and fraud-based 1.540(d) motions remain unresolved.(Ex. I)

III. LEGAL STANDARD

Rule 2.330(f): A motion is legally sufficient if the facts would cause a reasonable person to fear they cannot receive a fair trial.

Rule 2.215(b)(4): The Chief Judge may reassign for good cause — but where the Chief Judge herself is implicated, impartiality requires stepping aside.

Hazel-Atlas Glass Co., 322 U.S. 238 (1944): Fraud upon the court voids orders at any time.

IV. ARGUMENT

A. Disqualification of Judge Simon.

Judge Simon's division deleted Defendant's filings (Ex. C), adopted opposing counsel's drafts (Exs. E-H), and proceeded despite Defendant's constitutional objections. This creates a well-founded fear of bias.

B. Disqualification of Chief Judge Orshan.

Judge Orshan signed an order (Ex. B) despite recusal, controlled reassignment (Ex. D), and remains implicated administratively. A reasonable person would fear partiality.

C. Reassignment Alone Cannot Cure Bias.

Even if the case is reassigned, proceeding while Federal appeals remain open and Enriquez's 1.540(d) fraud motions remain unresolved prejudices issues under higher review. The only fair remedy is a stay.

D. Stay Pending Resolution.

With federal appeals and Judge Enriquez's fraud rulings pending, proceeding here risks inconsistent judgments and violates the Supremacy Clause.

V. RELIEF REQUESTED

Defendant respectfully requests that this Court:

Disqualify Judge Simon pursuant to Rule 2.330.

Disqualify Chief Judge Orshan pursuant to Rule 2.330.

Reassign this case under Rule 2.215(b)(4) to a division not under Chief Judge Orshan's control, with the express direction that proceedings be stayed until jurisdictional questions are resolved.

Stay these proceedings in any event, pending:

Resolution of Defendant's appeals, including docket entry no. 52 (filed May 23, 2025, Notice of Federal Fraud-Based Motion under Review in the Eleventh Circuit under Rule 60(d)(3), Fraud Upon the Court);

Adjudication of Defendant's pending Rule 1.540(d) fraud motions before Judge Enriquez; and

Recognition that jurisdiction was divested to federal court as of March 28, 2025 (docket entry no. 44).

Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W 49th Street

Miami Beach, FL 33140

Phone: 786-479-6596

Email: solphax@gmail.com

08.28.2025

EXHIBIT INDEX

Exhibit A – Defendant’s Motion to Stay/Abate (time-stamped)

Exhibit B – Certified copy of Order Denying Stay/Abate, signed by Orshan

Exhibit C – JA email thread re proposed orders

Exhibit D – Docket snapshot showing AO 25-06 out of sequence

Exhibit E – Cunill email draft Rule to Show Cause

Exhibit F – Cunill email draft sanctions order

Exhibit G – Service of draft orders (court staff)

Exhibit H – Court Map notification of draft order service

Exhibit I – KP Notice of Taking Deposition

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant's Motion to Disqualify Judge Simon and Chief Judge Orshan for Bias and Lack of Impartiality, and to Stay Proceedings Pending Resolution of Appeals and Rule 1.540(d) Motions, together with Exhibits A–J, has been filed via the Florida Courts E-Filing Portal on this 28th day of Aug, 2025. The filing has been served via ePortal and or email on the following:

Counsel for KP Investments Miami, LLC:

John Cunill, Esq.

john@cunill.com

(or the email on ePortal)

Judicial Officers (by email to chambers):

Hon. Ariana Fajardo Simon (Civil Division, Miami-Dade)

simon_chambers@jud11.flcourts.org

(or as per court protocol)

Hon. Ariana Fajardo Orshan (Chief Judge, 11th Judicial Circuit)

orshan_chambers@jud11.flcourts.org

(or as per court protocol)

Mario Mirabal, Pro Se

563 w 49 st

Miami Beach Fl 33140

786.479.6596

solphax@gmail.com

EXHIBIT A

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CASE NO.: 2024-022769-CA-01

KP INVESTMENTS MIAMI, LLC,

Plaintiff,

v.

MARIO MIRABAL,

Defendant.

DEFENDANT'S NOTICE OF LACK OF JURISDICTION AND MOTION
TO STAY/ABATE PROCEEDINGS PENDING FEDERAL REVIEW
AND PENDING RULE 1.540(d) MOTION

INTRODUCTION AND NOTICE

Defendant, Mario Mirabal, hereby gives notice that this Court presently lacks jurisdiction to proceed, and moves for an order staying and abating these proceedings.

NOT AN OFFICIAL COPY - PUBLIC ACCESS

This case was removed to the United States District Court for the Southern District of Florida as Case No. 1:25-cv-20747-JEM. That removal divested the state court of jurisdiction under 28 U.S.C. § 1446(d). Although the District Court entered an order of remand, Defendant timely appealed. Federal appellate review is ongoing in the U.S. Court of Appeals for the Eleventh Circuit as Case Nos. 25-10858, 25-10862, 25-11120, 25-11182, 25-11183, and 25-11254. Until those appeals are resolved and mandates issue, jurisdiction remains with the federal courts, and this Court is without authority to act.

Further underscoring this instability, Judge Orshan's prior actions in this case remain under review in the Florida Third District Court of Appeal (Case No. 3D2025-0540). Yet the case has been administratively reassigned to Judge Lourdes Simon without a formal recusal order while Orshan's rulings remain on appeal.

Finally, the Plaintiff's ejectment claims are wholly derivative of the foreclosure judgment at issue in Case No. 2018-018704-CA-01 (Deutsche Bank Nat'l Trust Co. v. Mirabal), where Defendant's Rule 1.540(d) motion remains pending before Judge Enriquez. Defendant further notes that the originating foreclosure action was dismissed with prejudice in 2020, making all derivative actions — including Plaintiff's ejectment claim — inconsistent with that final adjudication. Defendant's pending 1.540(d) motion seeks enforcement of that dismissal order against subsequent void proceedings.

For all of these reasons — federal removal and pending appeals, lack of jurisdiction under the Supremacy Clause, unresolved Rule 1.540(d) proceedings, and appellate review of Judge Orshan's conduct — Defendant respectfully moves this Court to stay and abate all proceedings.

NOT AN OFFICIAL COPY - PUBLIC ACCESS

FACTUAL BACKGROUND

This case was removed to the United States District Court for the Southern District of Florida as Case No. 1:25-cv-20747-JEM.

Following remand, Defendant timely appealed. The matter remains under review in the U.S. Court of Appeals for the Eleventh Circuit as Case Nos. 25-10858, 25-10862, 25-11120, 25-11182, 25-11183, and 25-11254.

Federal appellate review is ongoing and has not been resolved. These proceedings divest this Court of jurisdiction until final federal disposition.

Independently, in Case No. 2018-018704-CA-01 (Deutsche Bank Nat'l Trust Co. v. Mirabal), Defendant has filed a Rule 1.540(d) motion demonstrating that the foreclosure judgment underlying Plaintiff's title claims is void ab initio.

The foreclosure action was dismissed with prejudice in 2020, making any subsequent enforcement proceedings inconsistent with that final adjudication.

Plaintiff's ejectment claims in this action are entirely derivative of the foreclosure judgment at issue in the Enriquez case. If the 1.540(d) motion is granted, Plaintiff's claims here will be extinguished.

LEGAL BASIS

Supremacy Clause, U.S. Const. Art. VI, cl. 2: State courts are bound to respect the jurisdiction of federal courts once removal has occurred.

28 U.S.C. § 1446(d): Upon removal, state courts are divested of jurisdiction unless and until remand is final and unappealed. Here, multiple appeals are pending.

Florida Rule of Civil Procedure 1.540(d): A void judgment may be attacked at any time; until adjudication, derivative actions cannot lawfully proceed.

INCORPORATION BY REFERENCE

Defendant incorporates by reference the Affidavit of Forensic Facts in Support of Defendant's Rule 1.540(d) Motion, filed July 2025 in Case No. 2018-018704-CA-01, which outlines systemic assignment fraud, SEC (pooling) and REMIC violations, and 83 documented instances of fraud upon the court.

REQUEST FOR RELIEF

WHEREFORE, Defendant respectfully requests that this Court:

- A. Take notice of its lack of jurisdiction while federal appeals remain pending;
- B. Stay and abate all proceedings in this case, including Plaintiff's scheduled Motion for Sanctions on August 28, 2025;
- C. Defer to the pending federal appellate proceedings in the Eleventh Circuit — including Case Nos. 25-10858, 25-10862, 25-11120, 25-11182, 25-

11183, and 25-11254 — all of which involve overlapping issues of jurisdiction, fraud upon the court, and collusion between KP Investments Miami, LLC and Deutsche Bank, as well as the pending Rule 1.540(d) proceedings in Case No. 2018-018704-CA-01; and

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: Aug 20, 2025

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W 49th Street

Miami Beach, FL 33140

786-479-6596

solphax@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendant's Notice of Lack of Jurisdiction and Motion to Stay/Abate Proceedings has been filed with the Florida Courts E-Filing Portal this ___ day of August, 2025, and served via electronic mail and/or electronic filing notification on all counsel of record.

Dated: Aug 20, 2025

Miami, Florida

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal, Pro Se

563 W 49th Street

Miami Beach, FL 33140

Phone: (786) 479-6596

Email: solphax@gmail.com

EXHIBIT B

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2024-022769-CA-01

SECTION: CA32

JUDGE: Ariana Fajardo Orshan

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

vs.

Mario Mirabal

Defendant(s)

FILED FOR RECORD
2025 AUG 26 PM 4:01
JAMES L. CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
CIVIL #75

PROPOSED ORDER

THIS CAUSE came before the Court on Defendant's Notice of Lack of Jurisdiction and Motion to Stay/Abate Proceedings (Filed via ePortal on 8.20.20225). Upon review and being otherwise duly advised, it is hereby:

ORDERED AND ADJUDGED that Defendant's Motion is **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 25th day of August, 2025.

2024-022769-CA-01
Hon. Ariana Fajardo Orshan
CIRCUIT COURT JUDGE

STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that the foregoing is a true and
correct copy of the original on file in this
office August 28 AD 20 25
Juan Fernandez-Barquin, Esq.
Clerk of the Court and Comptroller
Deputy Clerk



33985052

EXHIBIT C

Case 2024-022769-CA-01 – Defendant's Motion to Stay/Abate – Proposed Order for Judge Simon (CA02)

Inbox



mario mirabel <solphax@gmail.com>
to earagon, John



Wed, Aug 20, 3:30 AM (8 days ago)

Ms. Aragon Ortega,

Please confirm chambers' receipt of attached Defendant's **Notice of Lack of Jurisdiction and Motion to Stay/Abate** filed via the ePortal on 8.20.2025 in **Case No. 2024-022769-CA-01 (KP Investments Miami, LLC v. Mario Mirabal)**. I am submitting the attached **Proposed Order** (Word format) for Judge Simon's review. Thank you.

Respectfully,

Mario Mirabal

563 W 49th Street, Miami Beach, FL 33140

786-479-6596 | solphax@gmail.com

2 Attachments • Scanned by Gmail



Aragon Ortega, Estefany

to me, John

Wed, Aug 20, 12:21 PM (8 days ago)

Good morning all:

I am in receipt of this email. However, please note Proposed Orders must be submitted via courtMAP for the Court's review.

Best regards,

Estefany N. Aragon Ortega, MPA

Judicial Assistant to Judge Lourdes Simon

Administrative Judge, Circuit Civil Division

Dade County Courthouse, 73 W Flagler St, #635

(305) 349-7152 | earagon@jud11.flcourts.org

From: mario mirabel <solphax@gmail.com>

Sent: Wednesday, August 20, 2025 3:30 AM

To: Aragon Ortega, Estefany <earagon@jud11.flcourts.org>; John Cunill <john@acfirm.com>

Subject: Case 2024-022769-CA-01 – Defendant's Motion to Stay/Abate – Proposed Order for Judge Simon (CA02)

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.



John Cunill

to Estefany, me

Wed, Aug 20, 12:25 PM (8 days ago)

Ms. Aragon-Ortega:

Plaintiff objects to this order and the manner in which it is being provided to the court without hearing.

Sent from my mobile device.

John Cunill Esq.

Law Offices of Adorno & Cunill PL

305.381.9999

305.775.4455

www.acfirm.com

john@acfirm.com

[1000 Brickell Ave Ste 1100 Miami, FL 33131](#)

From: Aragon Ortega, Estefany <earagon@jud11.flcourts.org>

Sent: Wednesday, August 20, 2025 12:21:27 PM

To: mario mirabel <solphax@gmail.com>; John Cunill <john@acfirm.com>

Subject: RE: Case 2024-022769-CA-01 – Defendant's Motion to Stay/Abate – Proposed Order for Judge Simon (CA02)

...

[Message clipped] [View entire message](#)

EXHIBIT D

le View



Select sorting...

Select a filter type



Image	Din	Date	Book/Page	Docket Entry	Event Type	Comments
		11/07/2025		Calendar Call	Hearing	
		08/28/2025		Motion Calendar	Hearing	PLAINTIFF S MOTION FOR SANCTIONS PURSUANT TO FLA. R. CIV. P. 1.380
	76	08/26/2025		Notice:	Event	Non-appearance
	75	08/26/2025		Order:	Event	PROPOSED- DEFENDANT'S MOTION IS DENIED
	74	08/20/2025		Notice:	Event	OF LACK OF JURISDICTION AND MOTION TO STAY/ABATE
				Notice of		August 28, 2025 at

EXHIBIT E

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

KP INVESTMENTS MIAMI, LLC, a
Florida Limited Liability Company,

Case No.: 2024-022769-CA-01

Plaintiff,

Vs

Judge.:

MARIO MIRABAL
and all those in possession

Defendant.

RULE TO SHOW CAUSE

THIS CAUSE came before the Court on August 28, 2025, upon Plaintiff's Motion for Sanctions pursuant to Florida Rule of Civil Procedure 1.380. The Court, having reviewed the record, heard argument of counsel, and being otherwise fully advised in the premises, ORDERS AND ADJUDGES as follows:

1. Defendant, Mario Mirabal, is hereby **ORDERED TO APPEAR** before this Court on Thursday, September 18, 2025, at 9:00 a.m., in Courtroom 6-1, 73 West Flagler Street, Miami, Florida 33130.
2. At that time and place, Defendant shall personally appear and SHOW CAUSE why he should not be held in contempt of court and sanctioned for failing to comply with this Court's prior order compelling his deposition and for failing to attend the deposition as noticed.
3. Plaintiff shall serve this Rule to Show Cause, along with the underlying Motion for Sanctions, upon Defendant in accordance with the Florida Rules of Civil Procedure, and shall file proof of service with the Court.
4. Defendant is hereby advised that failure to appear as ordered may result in sanctions, including but not limited to attorney's fees, striking of pleadings, entry of default, or other remedies authorized by law, without further notice.

DONE AND ORDERED, in chambers, at _____, _____ County, this _____ day of _____, _____.

HON. CIRCUIT JUDGE

Draft

EXHIBIT F

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

KP INVESTMENTS MIAMI, LLC, a
Florida Limited Liability Company,

Case No.: 2024-022769-CA-01

Plaintiff,

Vs

Judge.: Ariana Fajardo Oshan

MARIO MIRABAL
and all those in possession

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR SANCTIONS

THIS CAUSE came before the Court on August 28, 2025, on Plaintiff's Motion for Sanctions pursuant to Fla. R. Civ. P. 1.380 [D.E. 69] ("Motion"). Plaintiff was represented by counsel, John Cunill, Esq. The Defendant, Mario Mirabal, refused to appear, despite being notified of the hearing. The Court, having reviewed the Motion, the record, and being otherwise fully advised in the premises, finds as follows:

1. On June 18, 2025, this Court entered an Order compelling Defendant, Mario Mirabal, to appear for deposition on July 22, 2025, at 10:00 A.M. at the Law Offices of Adorno & Cunill, PL, 1000 Brickell Avenue, Suite 1100, Miami, Florida 33131.
2. Defendant failed to appear at his court ordered deposition.
3. A Certificate of Non-Appearance was issued by the court reporter confirming Defendant's failure to attend.
4. Defendant's failure to appear constitutes a willful violation of this Court's June 18, 2025, Order and is sanctionable under Fla. R. Civ. P. 1.380(d).

Accordingly, it is **ORDERED AND ADJUDGED**:

A. Plaintiff's Motion for Sanctions is GRANTED.

B. Defendant is Ordered to appear in-person for deposition at the Law Offices of Adorno & Cunill, PL, 1000 Brickell Avenue, Suite 1100, Miami, Florida 33131, on September 10, 2025, at 10:00 A.M.

C. Defendant is expressly cautioned that failure to comply with this Order may result in escalating sanctions, including striking of pleadings and entry of default judgment pursuant to Fla. R. Civ. P. 1.380.

D. The Court reserves on monetary sanctions and further sanctions.

DONE AND ORDERED, in chambers, at _____, _____ County, this _____ day of _____, _____.

HON. CIRCUIT JUDGE

EXHIBIT G

Service of Court Documents

Inbox

**John Cunill**

to me, Amarilis, Law



10:50 AM (2 hours ago)

Filer: John Cunill 305-381-9999
Court: Eleventh Judicial Circuit in and for Miami-Dade County, Florida
Case #: 132024CA02276901GE01
Court Case #: 2024-022769-CA-01
Case Style: KP INVESTMENTS MIAMI, LLC a Florida LLC vs Mario Mirabal
Documents: 1. Proposed order on Motion for Sanctions
2. Proposed Order to Show Cause.

John Cunill, Esq.**Law Offices of Adorno & Cunill PL**

1000 Brickell Avenue, Suite 1100

Miami, Florida 33131

Phone: 305-381-9999**Fax:** 305-381-9898**Cell:** 305-775-4455**Web:** www.acfirm.com

NOTICE: The information in this e-mail is confidential and may contain information that is attorney-client privileged or otherwise exempt from disclosure. It is intended only for the use of the individual(s) or entity(ies) to whom it is addressed. If you are not an intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. Anyone who receives this message in error should notify the sender immediately by telephone or by return e-mail and delete the entire message (and any attachments) from their computer. Nothing contained in this disclosure notice shall be deemed to create an attorney-client relationship between sender and recipient where such a relationship does not otherwise exist. Thank you.

Este mensaje electrónico y cualquier archivo que se adjunte contiene información legalmente privilegiada y confidencial. Es para uso exclusivo del destinatario. Si usted ha recibido esta comunicación por error, por favor avísenos inmediatamente. Gracias.

EXHIBIT H

Service of Draft Court Document: 2024-022769-CA-01

Inbox



cmap-noreply@jud11.flcourts.org

to

10:22 AM (2 hours ago)



Service of Draft Court Document

Case Number: 2024-022769-CA-01
Case Style: KP INVESTMENTS MIAMI, LLC a Florida LLC vs Mario Mirabal
Section: CA02
Court Order: Order On Motion To Compel
Title: ORDER GRANTING PLAINTIFF'S MOTION FOR SANCTIONS
Status: Pending

This is a system generated email. Please do not reply to this message.

The 11th Judicial Circuit serves the citizens of Miami-Dade County Florida. The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

© courtMAP - Eleventh Judicial Circuit of Florida



cmap-noreply@jud11.flcourts.org

to

10:45 AM (2 hours ago)



Service of Draft Court Document

Case Number: 2024-022769-CA-01
Case Style: KP INVESTMENTS MIAMI, LLC a Florida LLC vs Mario Mirabal
Section: CA02
Court Order: Order To Show Cause
Title: Order To Show Cause
Status: Pending

This is a system generated email. Please do not reply to this message.

The 11th Judicial Circuit serves the citizens of Miami-Dade County Florida. The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

© courtMAP - Eleventh Judicial Circuit of Florida

EXHIBIT I

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

KP INVESTMENTS MIAMI, LLC,
Plaintiff,

CASE NO.: 2024-022769-CA-01

SECTION: CA32

v.

MARIO MIRABAL,
Defendant.

_____ /

NOTICE OF DEPOSITION ON ORAL EXAMINATION
TO BE TAKEN IN PERSON

Please take notice that, pursuant to Rule 1.310 of the Florida Rules of Civil Procedure, Plaintiff, KP Investments Miami, LLC, will take the oral deposition of Defendant, Mario Mirabal, beginning on September 10, 2025 at 10:00 a.m., and continuing thereafter from day to day, excluding Sundays and holidays, until completed, at the Law Offices of Adorno & Cunill P.L. at 1000 Brickell Avenue, Suite 1100, Miami, FL 33131. The deposition will be taken in person, by Veritext Legal Solutions.

Any minor subpoenaed for testimony has the right to be accompanied by a parent or guardian at all times during the taking of testimony notwithstanding the invocation of the rule of sequestration of section 90.616, Florida Statutes, except on a showing that the presence of a parent or guardian is likely to have a material, negative impact on the credibility or accuracy of the minor's testimony, or that the interests of a parent or guardian are in actual or potential conflict with the interests of the minor.

NOTICE TO PERSONS WITH DISABILITIES
Americans with Disabilities Act (ADA)

If you qualify under the Americans with Disabilities Act (ADA) and need assistance, please visit the Eleventh Judicial Circuit of Florida or you may contact the ADA Coordinator at: E-mail: ADA Coordinator at ADA@jud11.flcourts.org; Voice Mail #: 305-349-7175; TDD #: 305-349-7174; Fax #: 305-349-7355. If you are hearing or voice impaired, please call 711 or 1-800-955-8771 for the Florida Relay Service.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August 2025, a true and correct copy was served to the Defendant, Mario Mirabal, by e-filing in accordance with the Florida Rules of Judicial Administration. Additionally, a copy was sent via email to the Defendant's email address at: solphax@gmail.com.

/s/ John Cunill

John Cunill

Attorney for Plaintiff

Florida Bar Number: 101733

Law Offices of Adorno & Cunill, PL

1000 Brickell Ave. Ste. 1100

Miami, FL 33131

Telephone: (305) 381-9999

Fax: (305) 381-9898

E-Mail: john@acfirm.com

EXHIBIT C

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2024-022769-CA-01

SECTION: CA32

JUDGE: Ariana Fajardo Orshan

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

vs.

Mario Mirabal

Defendant(s)

**ORDER DENYING MOTION TO DEEM DISQUALIFICATION GRANTED AND
REQUEST FOR STAY**

THIS CAUSE came before the Court on Defendant, Mario Mirabal's "NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND REQUEST FOR STAY PENDING FEDERAL AND RELATED PROCEEDINGS," which was filed on July 22, 2025.

Rule 2.330(d) requires that a motion to disqualify be served "no later than 30 days after the service of the motion as set forth in subdivision (d)." The motion for disqualification in this case was filed on June 22, 2025, but was not served on the undersigned as required by Rule 2.330(d). When there is a lack of proper service on the Judge, the 30-day deadline does not begin to run until the Judge actually receives the motion. *See Baker v. State*, 230 So. 3d 173, 174 (Fla. 1st DCA 2017); *Leila Corp. of St. Pete v. Ossi Consulting Engineers, Inc.*, 144 So. 3d 644, 646-47 (Fla. 2d DCA 2014). In this case, the motion was actually received by the undersigned on July 23, 2024, less than 30 days ago.

WHEREFORE, it is **ORDERED** and **ADJUDGED**:

The "NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND REQUEST FOR STAY PENDING FEDERAL AND RELATED PROCEEDINGS" is **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 31st day of July, 2025.



2024-022769-CA-01 07-31-2025 10:31 AM

Hon. Ariana Fajardo Orshan

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

- John Cunill: john@acfirm.com
- John Cunill: jmcunill@gmail.com
- John Cunill: john@adornocunill.com
- Amy Adorno: amy@acfirm.com
- Mario Mirabal: solphax@gmail.com
- Michelle Arguelles: assistant@acfirm.com
- Mario Mirabal: solphax@gmail.com

EXHIBIT D

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA – CIVIL DIVISION
CASE NO.: 2024-022769-CA-01
SECTION: CA 03
(Hon. Ariana Fajardo Orshan – recused)

KP INVESTMENTS MIAMI, LLC,
Plaintiff,

v.

MARIO MIRABAL (Ariana Birencwajg),
Defendants.

NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND
REQUEST FOR STAY PENDING FEDERAL AND RELATED
PROCEEDINGS

TO: The Honorable Nushin G. Sayfie, Chief Judge

Eleventh Judicial Circuit, Miami-Dade County, Florida

Defendant, Mario Mirabal, appearing pro se and as Attorney-in-Fact for co-Defendant Ariana Birencwajg, respectfully submits this Notice of Deemed Grant of Disqualification pursuant to Florida Rule of General Practice and Judicial Administration 2.160(f), and requests that all further proceedings in this matter be stayed pending resolution of jurisdictional matters now before the United States District Court, the Eleventh Circuit Court of Appeals, and the Hon. Javier Enriquez in Case No. 2018-018704-CA-01.

I. DISQUALIFICATION DEEMED GRANTED UNDER RULE 2.160(f)

On June 22, 2025, Defendant filed and served a Verified Motion to Disqualify the Honorable Judge Ariana Fajardo Orshan, pursuant to Florida Rule of Judicial Administration 2.160.

As of the date of this Notice, more than 30 days have passed without a ruling on that motion. Under Rule 2.160(f), where a judge has not entered an order granting or denying the motion within 30 days of service:

“The motion shall be deemed granted, and the moving party may seek an order from the chief judge.”

Accordingly, disqualification is now self-executing as a matter of law, and this Court is formally notified that the case must be reassigned.

II. REQUEST FOR STAY PENDING RELATED ACTIONS

In light of the now-granted disqualification, Defendant respectfully requests that the Chief Judge exercise her inherent administrative authority to:

Issue an administrative stay of all proceedings in this matter, including but not limited to:

Depositions;

Hearings or trial dates;

Motions to compel, sanction, or for summary judgment;

Maintain such stay pending outcome of:

Defendant's Rule 1.540(d) motion in Case No. 2018-018704-CA-01, which seeks to reinstate a 2020 final dismissal with prejudice that extinguishes the title interest asserted in this ejectment case;

Multiple pending federal appeals before the U.S. Court of Appeals for the Eleventh Circuit, involving overlapping parties, evidence, and property interests, as well as Rule 60(d)(3) filings and sealed submissions under the False Claims Act.

III. GROUNDS FOR STAY

This case is entangled with matters of federal jurisdiction, due process violations, fraudulent title conveyance, and state-federal conflict. Continued litigation at the trial level risks prejudicing ongoing federal review and final adjudication in:

Appeals already pending before the Eleventh Circuit;

Sealed federal proceedings involving Deutsche Bank and its assigns;

The state foreclosure case that forms the basis for Plaintiff's ejectment claim.

Failure to stay these proceedings risks irreparable procedural harm and institutional conflict between court rulings.

IV. PRAYER FOR RELIEF

Defendant respectfully requests:

That the Hon. Nushin G. Sayfie recognize that disqualification has been deemed granted under Rule 2.160(f);

That this case be reassigned accordingly;

That all proceedings in this matter be administratively stayed pending final adjudication of:

The pending Rule 1.540(d) motion in Case No. 2018-018704-CA-01;

All active Eleventh Circuit appeals and associated federal filings concerning

the same property.

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal (pro se)

Attorney-in-Fact for Ariana Birencwajg

563 W. 49th Street, Miami Beach, FL 33140

solphax@gmail.com | (786) 479-6596

Dated: July 22, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on this 22nd day of July, 2025, to:

John Cunill, Esq.

Counsel for Plaintiff

EXHIBIT B

IN THE DISTRICT COURT OF
APPEAL
OF FLORIDA
THIRD DISTRICT

August 7, 2025

Mario Mirabal,

3D2025-1487

Petitioner(s),

Trial Court Case No. 24-22769-CA-01

v.

KP Investments Miami, LLC,

Respondent(s).

Upon consideration of the pro se Emergency Petition for Writ of Prohibition or, Alternatively, Petition for Writ of Certiorari, filed on August 6, 2025, it is ordered that said Petition is hereby denied.

FERNANDEZ, LOBREE and GOODEN, JJ., concur.

A True Copy
ATTEST

3D2025-1487 8/7/25 *Prieto*
Mercedes M. Prieto, Clerk
District Court of Appeal
Third District



CC: John Cunill
Hon. Ariana Fajardo Orshan
Patricia Lynn Gladson
Mario Mirabal

NS

EXHIBIT C

IN THE DISTRICT COURT OF
APPEAL

OF FLORIDA

THIRD DISTRICT

August 28, 2025

Mario Mirabal,

3D2025-1487

Petitioner(s),

Trial Court Case No. 24-22769-CA-01

v.

KP Investments Miami, LLC,

Respondent(s).

Upon consideration, pro se Petitioner's Motion for Rehearing En Banc is treated as having included a motion for rehearing. The motion for rehearing is hereby denied.

Upon consideration, pro se Petitioner's Request for Written Opinion is hereby denied.

FERNANDEZ, LOBREE and GOODEN, JJ., concur.

Pro se Petitioner's Motion for Rehearing En Banc is, likewise, denied.

A True Copy
ATTEST

3D2025-1487 8/28/25] *Prieto*
Mercedes M. Prieto, Clerk
District Court of Appeal
Third District



CC: John Cunill
Hon. Ariana Fajardo Orshan
Patricia Lynn Gladson
Mario Mirabal

NS

EXHIBIT D

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

CASE NO. 2025-1487

Lower Tribunal Case No.: 2024-022769-CA-01

Division: CA31

MARIO MIRABAL,

Petitioner,

v.

THE HONORABLE ARIANA FAJARDO ORSHAN,

Respondent Circuit Judge for the Eleventh Judicial Circuit,

and

KP INVESTMENTS MIAMI, LLC,

Real Party in Interest.

EMERGENCY PETITION FOR WRIT OF PROHIBITION
OR, ALTERNATIVELY, PETITION FOR WRIT OF CERTIORARI
TO ENFORCE DEEMED GRANT OF JUDICIAL DISQUALIFICATION
AND TO HALT FURTHER ACTION BY DISQUALIFIED JUDGE

I. INTRODUCTION AND NATURE OF RELIEF SOUGHT

Petitioner, Mario Mirabal, pro se, respectfully files this Emergency Petition for Writ of Prohibition, or alternatively a Petition for Writ of Certiorari, seeking relief from unlawful judicial action taken by the Honorable Ariana Fajardo Orshan in violation of Florida Rule of General Practice and Judicial Administration 2.330(j).

Judge Orshan failed to enter an order on a properly filed and served Verified Motion for Disqualification within the mandatory 30-day period. As a matter of law, disqualification was deemed granted on July 22, 2025. Nevertheless, on July 30, 2025, Judge Orshan entered an order denying the disqualification motion — a ruling without jurisdiction, and in direct conflict with binding Florida authority.

Petitioner seeks:

(a) an immediate writ prohibiting further judicial action by Judge Orshan in Case No. 2024-022769-CA-01;

(b) vacatur of the July 30 order as void;

(c) reassignment to a neutral judge; and

(d) any other relief this Court deems just.

II. JURISDICTION

This Court has jurisdiction to issue writs of prohibition and certiorari pursuant to Article V, § 4(b)(3) of the Florida Constitution and Florida Rules of Appellate Procedure 9.030(b)(3) and 9.100.

A writ of prohibition is appropriate to restrain a lower court from acting without jurisdiction, including after disqualification is deemed granted by rule.

III. STATEMENT OF THE CASE AND FACTS

On June 22, 2025, Petitioner filed a Verified Motion to Disqualify Judge Orshan under Rule 2.330 of the Florida Rules of General Practice and Judicial Administration, citing substantial grounds for judicial bias, prior conduct, and conflicts related to sealed federal filings and retaliatory enforcement actions.

The motion was docketed, assigned a filing number, and properly served through the Florida Courts E-Filing Portal.

Pursuant to Rule 2.330(j):

“If the motion is not denied within 30 days of service, it shall be deemed granted and the judge shall immediately take no further action in the case.”

No order was entered by July 22, 2025 — the 30th day. Petitioner then filed a Notice of Deemed Granted Disqualification, and submitted notice to chambers.

On July 30, 2025, Judge Orshan entered an Order Denying Motion to Disqualify, asserting for the first time that she had not become “aware” of the motion until July 23 — the day after the disqualification was triggered by rule.

The order was entered after the 30-day deadline, in violation of the plain text of Rule 2.330(j), and is therefore null and void.

IV. ARGUMENT

A. Rule 2.330(j) is Mandatory and Self-Executing

Florida courts have long held that:

“The 30-day limit is mandatory. Once the period expires without an order, the motion is deemed granted, and the judge is without jurisdiction to act further.”

— Nunez v. Backman, 645 So. 2d 1063 (Fla. 3d DCA 1994);

— Barwick v. State, 660 So. 2d 685, 692 (Fla. 1995)

The judge’s subjective “awareness” is irrelevant. Service via the e-Filing Portal is effective, and Rule 2.330 imposes no requirement for separate email or in-person notice.

B. Orshan’s July 30 Order is Void for Lack of Jurisdiction

Once the 30-day window closed on July 22, 2025, Judge Orshan was jurisdictionally barred from entering any further order.

Her July 30 ruling is:

Void ab initio;

A violation of due process;

Grounds for immediate prohibition.

C. Extraordinary Relief is Warranted

Petitioner faces imminent harm from judicial action taken by a disqualified judge. A pending motion for sanctions by KP Investments — the very party whose filings formed part of the disqualification motion — remains live, risking irreparable reputational and financial damage.

This Court must intervene to preserve the rule of law, and to prohibit further judicial acts by a judge who has been legally removed by operation of rule.

V. EXHIBITS AND APPENDIX REFERENCE

The following supporting documents are included in the separately filed Appendix, in compliance with Florida Rule of Appellate Procedure 9.220:

Exhibit A: Verified Motion to Disqualify Judge Orshan (Filed June 22, 2025)

Exhibit B: Notice of Deemed Grant of Disqualification (Filed July 22, 2025)

Exhibit C: Email Thread with JA for Chief Judge Sayfie (July 22–23, 2025)

Exhibit D: Order Denying Motion to Disqualify (Entered July 30, 2025)

Exhibit E: RULE 2.330. DISQUALIFICATION OF TRIAL JUDGES
(Florida Rules of General Practice and Judicial Administration
<https://www.flcourts.gov/content/download/217909/file/Florida-Rules-of-Judicial-Administration.pdf>)

VI. CLARIFICATION REGARDING RULE 2.330 INTERPRETATION AND TRIGGERING OF DEEMED GRANT

Respondent Judge Orshan's July 30 order attempts to deny Petitioner's motion to disqualify by asserting she was not "aware" of the motion until July 23, 2025, and therefore that the 30-day clock had not begun.

A. THE JUDGE'S INTERPRETATION OF RULE 2.330 IS CONTRARY TO THE RULE'S TEXT

Judge Orshan's July 30 Order asserts that because she was not "aware" of the disqualification motion until July 23, 2025, the 30-day deadline under Rule 2.330(j) had not begun to run. That interpretation is unsupported by the rule and directly conflicts with its mandatory timing requirements.

B. SERVICE WAS COMPLETED UNDER RULE 2.516

Petitioner's Verified Motion to Disqualify was:

Filed via the Florida Courts E-Filing Portal on June 22, 2025;

Served through the portal upon all parties, including the trial court;

Docketed and recorded, demonstrating proper transmission.

Under Rule 2.516(b)(1), service via the portal is effective when transmitted unless returned as undeliverable. The judge's subjective awareness is not a requirement to trigger Rule 2.330(j).

C. THE 30-DAY DEADLINE IS MANDATORY

Florida Rule 2.330(j) states:

“If the motion is not denied within 30 days of service, it shall be deemed granted, and the judge shall immediately take no further action in the case.”

This rule is clear and unambiguous. The judge's failure to act within 30 days from June 22, 2025—the date of portal service—resulted in automatic disqualification on July 22, 2025.

As the Florida Supreme Court and this Court have long held:

“The 30-day limit is mandatory.”

— Barwick v. State, 660 So. 2d 685, 692 (Fla. 1995)

“Once the period expires without an order, the motion is deemed granted.”

— Nunez v. Backman, 645 So. 2d 1063 (Fla. 3d DCA 1994)

D. FULL TEXT OF RULE 2.330 ATTACHED

To aid the Court’s review, Petitioner attaches the full text of Rule 2.330 (as updated October 31, 2024), including subsections (d), (j), and (l), which collectively confirm:

That service via the ePortal is legally sufficient;

That 30 days is measured from date of service, not judicial “awareness”;

That if no ruling is issued, disqualification is automatic and irrevocable.

VII. RELIEF REQUESTED

Petitioner respectfully requests that this Court:

Issue a writ of prohibition prohibiting Judge Ariana Fajardo Orshan from taking any further action in Case No. 2024-022769-CA-01;

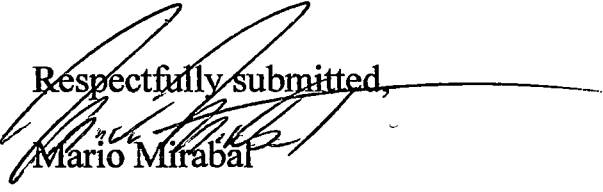
Vacate the July 30 and July 31, 2025 orders as void and entered without jurisdiction;

Order reassignment of the case to a neutral judge;

Stay all proceedings in the underlying case pending this Court's review; and

Grant any other relief deemed just and proper.

Respectfully submitted,


Mario Mirabal

Pro Se Petitioner

563 W 49th Street

Miami Beach, FL 33140

solphax@gmail.com

786-479-6596

Dated: Aug 4, 2025

APPENDIX – PROCEDURAL BACKGROUND OF VERIFIED DISQUALIFICATION MOTION (Filed June 22, 2025)

Petitioner respectfully submits the following background to inform the Court of the context in which the Verified Motion to Disqualify Judge Ariana Fajardo Orshan was filed. This section is not intended as a basis for relief in this proceeding but is offered solely to clarify the nature of the judicial conduct that prompted the disqualification motion and the prejudice that has followed.

1. Underlying Case: Derivative of a Derivative of a Foreclosure Action

The case before Judge Orshan (Case No. 2024-022769-CA-01) is an

ejectment action brought by KP Investments Miami, LLC. This case is derivative of a specific performance suit (2022-004706-CA-01) with a still un-adjudicated 1.540(b) for fraud, which in turn relies entirely on a foreclosure judgment entered in Case No. 2018-018704-CA-01 — a judgment now subject to a pending Rule 1.540(d) motion in that original action.

The underlying foreclosure case was previously dismissed with prejudice on March 5, 2020. That dismissal was never vacated by court order. Petitioner has challenged all downstream litigation based on that voided judgment.

2. Federal Jurisdiction Pending

Petitioner has removed Orshan (Case No. 2024-022769-CA-01 to federal court and now in the U.S. Court of Appeals for the Eleventh Circuit, which remain pending. These filings raise federal questions including due process violations, 83 counts of fraud on the court, and federally protected SEALED filings.

Despite the removal and the pending appellate dockets related to (Case No. 2024-022769-CA-01, Judge Orshan has continued to act, including scheduling proceedings — a position Petitioner asserts lacks jurisdiction.

3. Overlooked Sealed Filings

Petitioner has filed multiple protective notices and sealed filings to preserve federally protected material and jurisdiction, These filings have gone unacknowledged by Judge Orshan's chambers. Meanwhile every motion filled by KP Investments has received review on the same date it was field.

4. Judicial Assistant's Statement

Judge Orshan's Judicial Assistant has advised Mr. Mirabal that the Judge does not routinely review filings unless a hearing is affirmatively requested. Based on that statement and since being advised, Petitioner has amended all motions and notices to include an explicit request for hearing including on the disqualification issue as follows:

" As relayed by the Judicial Assistant for this Court, Judge Orshan's docket encompasses over 2,000 active cases, and motions may not be reviewed unless a formal hearing is requested. Defendant therefore requests a hearing on this notice solely to ensure the Court acknowledges the filing, and does not overlook the pending jurisdictional conflict due to administrative volume"

5. No Response within 30 Days

Despite clear service and a request for hearing, Judge Orshan issued no order by July 22, 2025. Pursuant to Rule 2.330(j), the motion was deemed granted by operation of law. Petitioner filed a Notice of Deemed Granted Disqualification and transmitted a courtesy copy to chambers for Judge Nushin G. Sayfie listed as Chief Judge of the Eleventh Judicial Circuit on <https://www.jud11.flcourts.org/Judge-Details/ChiefJudge> .

6. Subsequent Action by Disqualified Judge The Honorable Ariana Fajardo Orshan now The Chief Judge of the Eleventh Judicial Circuit.

After the 30-day deadline passed, Judge Orshan issued an order denying the disqualification, and continued to allow litigation activity including a pending motion for sanctions filed by KP Investments. Petitioner contends these post-disqualification actions are nullities under Florida law.

Supplemental Note on Rule 2.330(f) and Non-Attendance at Deposition

On June 22, 2025, Defendant filed a Verified Motion to Disqualify Judge Ariana Fajardo Orshan, triggering the mandatory procedural safeguards under Florida Rule of General Practice and Judicial Administration 2.330(f),

which provides:

“The judge shall take no further action in the proceeding, except to enter an order on the motion, until the motion is resolved.”

From that moment forward, Judge Orshan was prohibited from enforcing prior orders or issuing any new rulings in the matter, other than addressing the disqualification itself. Defendant respectfully declined to appear at a deposition scheduled for July 22, 2025, pursuant to a judicial order that had become unenforceable under Rule 2.330(f). The court’s failure to timely rule on the motion resulted in an automatic disqualification under Rule 2.330(j), rendering any subsequent enforcement actions, including the pending motion for sanctions, jurisdictionally void and legally ineffective.

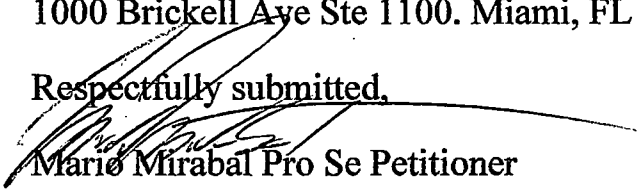
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Petition for Writ of Prohibition was served on July 31, 2025, via t U.S. Mail, to the following parties:

John Cunill Law Offices of Adorno & Cunill PL.

1000 Brickell Ave Ste 1100. Miami, FL 33131-3014

Respectfully submitted,


Mario Mirabal Pro Se Petitioner

563 W. 49th Street

Miami Beach, FL 33140

Tel: 786-479-6596

Email: solphax@gmail.com

Dated: August 4, 2025

EXHIBIT A

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA – CIVIL DIVISION
CASE NO.: 2024-022769-CA-01
SECTION: CA 03

KP INVESTMENTS MIAMI, LLC,

Plaintiff,

v.

MARIO MIRABAL (Ariana Birencwajg),

Defendants.

_____/

REQUEST FOR HEARING AND DEFENDANT’S VERIFIED MOTION
TO DISQUALIFY JUDGE ARIANA FAJARDO ORSHAN PURSUANT
TO FLORIDA RULE OF GENERAL PRACTICE AND JUDICIAL
ADMINISTRATION 2.330

COMES NOW the Defendant, Mario Mirabal, pro se and as Attorney-in-Fact
for co-Defendant Ariana Birencwajg, and respectfully moves for
disqualification of the Hon. Judge Ariana Fajardo Orshan from further
participation in this case pursuant to Rule 2.330, Florida Rules of General
Practice and Judicial Administration.

I. GROUNDS FOR DISQUALIFICATION

This motion is based on well-established grounds of judicial disqualification under Rule 2.330, which permits recusal when:

“the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.”

Defendant asserts a well-founded, objectively reasonable fear that continued oversight by Judge Orshan in this matter denies Defendant an impartial forum. Grounds include but are not limited to:

1. Asymmetric treatment of party filings—Defendant’s motions raising jurisdictional and constitutional issues have been repeatedly ignored, while Plaintiff’s motions are promptly calendared and granted.
2. Premature scheduling of dispositive hearings while federal jurisdiction and appeals remain pending, in contradiction to prior court advisories to avoid

ruling amid jurisdictional uncertainty.

3. Judge Orshan's issuance of a signed Order compelling in-person deposition (entered June 18, 2025) despite Defendant's live objections, multiple filings invoking the Supremacy Clause, and Defendant's absence from the hearing based on documented conflict with a federal oversight trip to Washington, D.C.

4. Failure to address Defendant's filed Notice of Federal Oversight and Jurisdictional Conflict submitted prior to the deposition order, and the complete omission of that notice from responsive rulings.

5. Pattern of one-sided rulings that strongly suggest predetermined judicial alignment, or at minimum, create the objective appearance of prejudice incompatible with due process.

II. PRESERVATION OF RIGHTS AND STAY OF PROCEEDINGS

This motion is timely under Rule 2.330(e), filed within 10 days of the entry of the June 18, 2025 order compelling Defendant's deposition.

Pursuant to Rule 2.330(f):

"The judge shall take no further action in the proceeding until the motion is ruled upon."

Defendant invokes this stay to prevent enforcement of the deposition order until this motion is adjudicated.

III. RELIEF REQUESTED

Defendant respectfully requests:

That Judge Ariana Fajardo Orshan be disqualified from further proceedings in this case,

That the matter be reassigned pursuant to Rule 2.330,

That all upcoming hearings or discovery actions be stayed pending proper reassignment.

As relayed by the Judicial Assistant for this Court, Judge Orshan's docket encompasses over 2,000 active cases, and motions may not be reviewed unless a formal hearing is requested. Defendant therefore requests a hearing on this notice solely to ensure the Court acknowledges the filing, and does not overlook the pending jurisdictional conflict due to administrative volume.

IV. VERIFICATION

I, Mario Mirabal, verify that the factual statements in this motion are true and correct to the best of my knowledge and belief.

/s/ Mario Mirabal

Mario Mirabal (Pro Se)

Attorney-in-Fact for Ariana Birencwajg

563 W 49th Street, Miami Beach, FL 33140

solphax@gmail.com | (786) 479-6596

Dated: June 22, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on this 22nd day of June, 2025 to:

John Cunill, Esq.

Counsel for Plaintiff KP Investments Miami, LLC

EXHIBIT B

IN THE CIRCUIT COURT
OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY,
FLORIDA – CIVIL DIVISION
CASE NO.: 2024-022769-CA-01
SECTION: CA 03
(Hon. Ariana Fajardo Orshan – recused)

KP INVESTMENTS MIAMI, LLC,

Plaintiff,

v.

MARIO MIRABAL (Ariana Birencwajg),

Defendants.

_____/

NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND
REQUEST FOR STAY PENDING FEDERAL AND RELATED
PROCEEDINGS

TO: The Honorable Nushin G. Sayfie, Chief Judge

Eleventh Judicial Circuit, Miami-Dade County, Florida

Defendant, Mario Mirabal, appearing pro se and as Attorney-in-Fact for co-Defendant Ariana Birencwajg, respectfully submits this Notice of Deemed Grant of Disqualification pursuant to Florida Rule of General Practice and Judicial Administration 2.160(f), and requests that all further proceedings in this matter be stayed pending resolution of jurisdictional matters now before the United States District Court, the Eleventh Circuit Court of Appeals, and the Hon. Javier Enriquez in Case No. 2018-018704-CA-01.

I. DISQUALIFICATION DEEMED GRANTED UNDER RULE 2.160(f)

On June 22, 2025, Defendant filed and served a Verified Motion to Disqualify the Honorable Judge Ariana Fajardo Orshan, pursuant to Florida Rule of Judicial Administration 2.160.

As of the date of this Notice, more than 30 days have passed without a ruling on that motion. Under Rule 2.160(f), where a judge has not entered an order granting or denying the motion within 30 days of service:

“The motion shall be deemed granted, and the moving party may seek an order from the chief judge.”

Accordingly, disqualification is now self-executing as a matter of law, and this Court is formally notified that the case must be reassigned.

II. REQUEST FOR STAY PENDING RELATED ACTIONS

In light of the now-granted disqualification, Defendant respectfully requests that the Chief Judge exercise her inherent administrative authority to:

Issue an administrative stay of all proceedings in this matter, including but not limited to:

Depositions;

Hearings or trial dates;

Motions to compel, sanction, or for summary judgment;

Maintain such stay pending outcome of:

Defendant's Rule 1.540(d) motion in Case No. 2018-018704-CA-01, which seeks to reinstate a 2020 final dismissal with prejudice that extinguishes the title interest asserted in this ejectment case;

Multiple pending federal appeals before the U.S. Court of Appeals for the Eleventh Circuit, involving overlapping parties, evidence, and property interests, as well as Rule 60(d)(3) filings and sealed submissions under the False Claims Act.

III. GROUNDS FOR STAY

This case is entangled with matters of federal jurisdiction, due process violations, fraudulent title conveyance, and state-federal conflict. Continued litigation at the trial level risks prejudicing ongoing federal review and final adjudication in:

Appeals already pending before the Eleventh Circuit;

Sealed federal proceedings involving Deutsche Bank and its assigns;

The state foreclosure case that forms the basis for Plaintiff's ejectment claim.

Failure to stay these proceedings risks irreparable procedural harm and institutional conflict between court rulings.

IV. PRAYER FOR RELIEF

Defendant respectfully requests:

That the Hon. Nushin G. Sayfie recognize that disqualification has been deemed granted under Rule 2.160(f);

That this case be reassigned accordingly;

That all proceedings in this matter be administratively stayed pending final adjudication of:

The pending Rule 1.540(d) motion in Case No. 2018-018704-CA-01;

All active Eleventh Circuit appeals and associated federal filings concerning

the same property.

Respectfully submitted,

/s/ Mario Mirabal

Mario Mirabal (pro se)

Attorney-in-Fact for Ariana Birencwajg

563 W. 49th Street, Miami Beach, FL 33140

solphax@gmail.com | (786) 479-6596

Dated: July 22, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on this 22nd day of July, 2025, to:

John Cunill, Esq.

Counsel for Plaintiff

EXHIBIT C

Emergency Filing – Notice of Deemed Granted Disqualification in Case No. 2024-022769-CA-01 (Judge Orshan)

Inbox



mario mirabel <solphax@gmail.com>
to rayala

Tue, Jul 22, 5:33 PM (9 days ago)

Ms. Ayala,

Please be advised that I have filed today an **Emergency Notice of Deemed Granted Disqualification** in Case No. 2024-022769-CA-01, pursuant to **Rule 2.330(j)** of the Florida Rules of General Practice and Judicial Administration.

The verified motion to disqualify Judge Ariana Fajardo Orshan was filed on **June 22, 2025**, and no order was entered within the 30-day period. Accordingly, disqualification is now **self-executing by operation of law**, and the matter is respectfully referred to the Chief Judge for administrative reassignment.

I am requesting a stay of proceedings in the interim, as detailed in the attached filing.

Respectfully,
Mario Mirabal
Pro Se Defendant
solphax@gmail.com

786-479-6596

Attachment: 2025 JUDGE ORSHAN NOTICE OF DEEMED GRANT OF DISQUALIFICATION.pdf

One attachment • Scanned by Gmail



Ayala, Ricarda
to Daniela, me

Wed, Jul 23, 1:20 PM (8 days ago)

Good afternoon,

Judge Sayfie is no longer the Chief Judge. As of July 1, 2025, Judge Fajardo Orshan is the new Chief Judge. Please reach out to her JA, Daniela, I have cc'd her in this email. Thank you.



Ricarda R. Ayala

Judicial Assistant to the
Honorable Judge Nushin Sayfie
Circuit Court Judge
Probate Division PMH07
Dade County Courthouse
73 West Flagler St., Rm. 1502
Miami, FL 33130
Phone: (305) 349-7595
rayala@jud11.flcourts.org

From: mario mirabel <solphax@gmail.com>

Sent: Tuesday, July 22, 2025 5:33 PM

To: Ayala, Ricarda <rayala@jud11.flcourts.org>

Subject: Emergency Filing – Notice of Deemed Granted Disqualification in Case No. 2024-022769-CA-01 (Judge Orshan)

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

One attachment • Scanned by Gmail

Gonzalez-Varona, Daniela <dgonzalez-varona@jud11.flcourts.org>

Wed, Jul 23, 1:50 PM (8 days ago)

to Ricarda, me 

Good afternoon,

Received.

Thank you,

Daniela Gonzalez Varona

Judicial Assistant to the Honorable
Chief Judge Ariana Fajardo Orshan
Lawson E. Thomas Courthouse
175 N.W 1st Ave, Suite #3045
Miami, Florida 33130
Phone: (305) 349-5720
dgonzalez-varona@jud11.flcourts.org

From: Ayala, Ricarda <rayala@jud11.flcourts.org>

Sent: Wednesday, July 23, 2025 1:20 PM

To: mario mirabel <solphax@gmail.com>

Cc: Gonzalez-Varona, Daniela <dgonzalez-varona@jud11.flcourts.org>

Subject: RE: Emergency Filing – Notice of Deemed Granted Disqualification in Case No. 2024-022769-CA-01 (Judge Orshan)

EXHIBIT D

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2024-022769-CA-01

SECTION: CA32

JUDGE: Ariana Fajardo Orshan

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

vs.

Mario Mirabal

Defendant(s)

ORDER DENYING MOTION TO DISQUALIFY

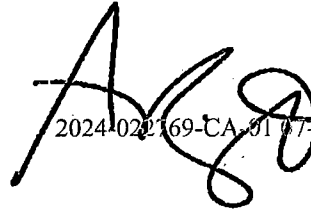
THIS CAUSE came before the Court on Defendant, Mario Mirabal's "REQUEST FOR HEARING AND DEFENDANT'S VERIFIED MOTION TO DISQUALIFY JUDGE ARIANA FAJARDO ORSHAN PURSUANT TO FLORIDA RULE OF GENERAL PRACTICE AND JUDICIAL ADMINISTRATION 2.330" (hereinafter "motion to disqualify"). The motion was filed on June 22, 2025, but was not served on the undersigned as required by Rule 2.330(d), and the undersigned was not aware of it until July 23, 2025, after receiving a "NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND REQUEST FOR STAY PENDING FEDERAL AND RELATED PROCEEDINGS," which was filed on July 22, 2025.

The Court, having reviewed the motion to disqualify, hereby finds that it is legally insufficient.

WHEREFORE, it is **ORDERED** and **ADJUDGED**:

The motion to disqualify is **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 30th day of July, 2025.



2024-022769-CA-01 07-30-2025 10:33 AM

2024-022769-CA-01 07-30-2025 10:33 AM

Hon. Ariana Fajardo Orshan

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

- John Cunill: john@acfirm.com
- John Cunill: jmcunill@gmail.com
- John Cunill: john@adornocunill.com
- Amy Adorno: amy@acfirm.com
- Mario Mirabal: solphax@gmail.com
- Michelle Arguelles: assistant@acfirm.com
- Mario Mirabal: solphax@gmail.com

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2024-022769-CA-01

SECTION: CA32

JUDGE: Ariana Fajardo Orshan

KP INVESTMENTS MIAMI, LLC a Florida LLC

Plaintiff(s)

vs.

Mario Mirabal

Defendant(s)

**ORDER DENYING MOTION TO DEEM DISQUALIFICATION GRANTED AND
REQUEST FOR STAY**

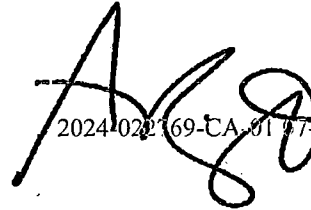
THIS CAUSE came before the Court on Defendant, Mario Mirabal's "NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND REQUEST FOR STAY PENDING FEDERAL AND RELATED PROCEEDINGS," which was filed on July 22, 2025.

Rule 2.330(d) requires that a motion to disqualify be served "no later than 30 days after the service of the motion as set forth in subdivision (d)." The motion for disqualification in this case was filed on June 22, 2025, but was not served on the undersigned as required by Rule 2.330(d). When there is a lack of proper service on the Judge, the 30-day deadline does not begin to run until the Judge actually receives the motion. *See Baker v. State*, 230 So. 3d 173, 174 (Fla. 1st DCA 2017); *Leila Corp. of St. Pete v. Ossi Consulting Engineers, Inc.*, 144 So. 3d 644, 646–47 (Fla. 2d DCA 2014). In this case, the motion was actually received by the undersigned on July 23, 2024, less than 30 days ago.

WHEREFORE, it is **ORDERED** and **ADJUDGED**:

The "NOTICE OF DEEMED GRANT OF DISQUALIFICATION AND REQUEST FOR STAY PENDING FEDERAL AND RELATED PROCEEDINGS" is **DENIED**.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 31st day of July, 2025.



2024-022769-CA-01 07-31-2025 10:31 AM

2024-022769-CA-01 07-31-2025 10:31 AM

Hon. Ariana Fajardo Orshan

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

- John Cunill: john@acfirm.com
- John Cunill: jmcunill@gmail.com
- John Cunill: john@adornocunill.com
- Amy Adorno: amy@acfirm.com
- Mario Mirabal: solphax@gmail.com
- Michelle Arguelles: assistant@acfirm.com
- Mario Mirabal: solphax@gmail.com

EXHIBIT E

RULE 2.330. DISQUALIFICATION OF TRIAL JUDGES

(a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court when acting alone as the sole judicial officer in a trial or appellate proceeding. It does not apply to justices, appellate-level judges, or county and circuit judges sitting on a multi-judge appellate panel.

(b) Parties. Any party, including the state, may move to disqualify the judge assigned to the case on grounds provided by rule, statute, Code of Judicial Conduct, or general law, and in accordance with the procedural provisions of this rule.

(c) Motion. A motion to disqualify shall:

(1) be in writing;

(2) allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification, and identify the precise date when the facts constituting the grounds for the motion were discovered by the party or the party's counsel, whichever is earlier;

(3) be sworn to or affirmed by the party by signing the motion or by attaching a separate affidavit;

(4) include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions; and

(5) include a separate certification by the attorney for the party, if any, that the motion and the client's statements are made in good faith.

(d) Service. In addition to filing with the clerk, the movant shall promptly serve a copy of the motion on the subject judge as set forth in rule 2.516.

(e) Grounds. A motion to disqualify shall set forth all specific and material facts upon which the judge's impartiality might

reasonably be questioned, including but not limited to the following circumstances:

(1) the party reasonably fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge; or

(2) the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse of domestic partner of such a person:

(A) has more than a *de minimis* economic interest in the subject matter in controversy or is a party to the proceeding, or an officer, director, or trustee of a party;

(B) is acting as a lawyer in the proceeding;

(C) has more than a *de minimis* interest that could be substantially affected by the proceeding; or

(D) is likely to be a material witness or expert in the proceeding.

(3) The judge served as a lawyer or was the lower court judge in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter; or

(4) The judge has prior personal knowledge of or bias regarding disputed evidentiary facts concerning the proceeding.

(f) Prohibition against Creation of Grounds for Disqualification Based Upon Appearance of Substitute or Additional Counsel. Upon the addition of new substitute counsel or additional counsel in a case, the party represented by such newly appearing counsel is prohibited from filing a motion for disqualification of the judge based upon the new attorney's involvement in the case. This subdivision shall not apply, however, to a motion to disqualify a successor judge who was not the

presiding judge at the time of the new attorney's first appearance in the case.

(g) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 20 days after discovery by the party or party's counsel, whichever is earlier, of the facts constituting the grounds for the motion. The motion shall be promptly served on the subject judge as set forth in subdivision (d). Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c)(1) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.

(h) Determination — Initial Motion. The judge against whom an initial motion to disqualify under subdivision (e) is directed may determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. Such an order does not constitute acknowledgement that the allegations are true.

(i) Determination — Successive Motions. If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (e), a successor judge cannot be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.

(j) Prior Rulings. Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 30 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.

(k) Recusal Upon Judge's Initiative. Nothing in this rule limits the judge's authority to enter an order of recusal.

(l) Time for Determination. The judge against whom the motion for disqualification has been filed shall take action on the motion immediately, but no later than 30 days after the service of the motion as set forth in subdivision (d). If the motion is not denied within 30 days of service, the motion is deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.

RULE 2.340. JUDICIAL ATTIRE

During any judicial proceeding, robes worn by a judge must be solid black with no embellishment.

PART IV. JUDICIAL PROCEEDINGS AND RECORDS

RULE 2.410. POSSESSION OF COURT RECORDS

No person other than judges and authorized court employees shall remove court records as defined in rule 2.430 from the clerk's office except by order of the chief judge or chief justice upon a showing of good cause.

Court Commentary

1996 Adoption. This rule was written as a result of the problems being encountered in the removal of files from clerks' offices. While the purpose of the rule is to discourage the removal of court files, it is not intended to prohibit chief judges or the chief justice from issuing for good cause a general order providing that attorneys or authorized individuals may be allowed to check out files on a routine basis to assist in the administrative efficiency of a court. We note that section 28.13, Florida Statutes (1995), similarly prohibits the removal of files from clerks' offices.